

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

- - -

STATE OF OHIO, :

Plaintiff. :

vs. :Case Number B1003262

RUBEN JORDAN, :Appeal Number C1100833

Defendant. :Volume IV of X

TRANSCRIPT OF PROCEEDINGS

- - -

APPEARANCES:

Seth S. Tieger, Esq.
Megan E. Shanahan, Esq.
On behalf of the State of Ohio.

William P. Whalen, Jr., Esq.
Amy R. Williams, Esq.
On behalf of the Defendant.

BE IT REMEMBERED that upon the Jury
Trial of this cause, on January 14, 2011, before
the Honorable NADINE L. ALLEN, a judge of the
said court, the following proceedings were had,
to wit:

OFFICER ANDREW FUSSELMAN

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Cross-ExaminationPage 437, Line 10

DEAN SHADE, JR.

Direct ExaminationPage 440, Line 18

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PAUL GLINDMEYER

Direct ExaminationPage 478, Line 15

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JOHN HEILE

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WILLIAM HARRY

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MONA GRETTEL STEPHENS, MD

Direct ExaminationPage 567, Line 1

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1 MORNING SESSION, January 14, 2011

2 THE COURT: Good morning. You may
3 be seated. Everyone, are we ready to
4 bring in the jury or still working on
5 something, Counsel?

6 MR. TIEGER: Judge, we are ready.

7 MR. WHALEN: We are ready.

8 THE COURT: Everyone is ready. All
9 right.

10 MR. BRENNER: All rise for the
11 jury.

12 (The jury entering the courtroom at
13 10:20 a.m.)

14 THE COURT: All right. You may all
15 be seated. I believe the State is ready
16 to call the next witness.

17 MR. TIEGER: Yes, Your Honor.

18 THE COURT: And that would be?

19 MR. TIEGER: Dean Shade.

20 THE COURT: Good morning, ladies
21 and gentlemen, members of the jury.

22 JURORS: Good morning.

23 THE COURT: And we would like to
24 welcome back Dee-Dee Mitchell here today,
25 and you'll be in her care and custody

1 today also.

2 BAILIFF: Thank you for having me,
3 Judge.

4 MR. TIEGER: Judge, he might be in
5 the restroom. I'm going to start with
6 Police Officer Fusselman.

7 THE COURT: That's fine.

8 OFFICER ANDREW FUSSELMAN,
9 having been first duly sworn, was examined and
10 testified as follows:

11 THE COURT: You may have a seat
12 right here, Officer.

13 DIRECT EXAMINATION

14 BY MR. TIEGER:

15 Q. Sir, would you please state your
16 name and spell your last name.

17 A. Police Officer Andrew Fusselman,
18 F-U-S-S-E-L-M-A-N.

19 Q. What's your occupation?

20 A. Patrol officer, District 4.

21 Q. And is that for the City of
22 Cincinnati Police?

23 A. Yes.

24 Q. How long have you been a Cincinnati
25 police officer?

1 A. Three-and-a-half years.

2 Q. And you're assigned to District 4
3 right now?

4 A. Yes.

5 Q. What area is the District 4 area?

6 A. It's Mt. Auburn, Avondale, Walnut
7 Hills, Bond Hill, Roselawn.

8 Q. And are you -- have you also been
9 in District 4?

10 A. No.

11 Q. Where did you start out?

12 A. District 1.

13 Q. And we have heard, I think, from
14 another officer that's downtown Over-the-Rhine,
15 the West End, Mt. Adams?

16 A. Correct.

17 Q. I'm going to direct your attention
18 back to October 16th of 2008, it was around one
19 in the morning or so. Did you respond to an
20 area near the corner of Republic and Elder?

21 A. Yes.

22 Q. And why did you respond to that
23 area?

24 A. We had a shooting that occurred
25 that night.

1 Q. What did you find when you got to
2 the scene?

3 A. I believe his name was Brian
4 Austin. He was deceased at the corner of Elder
5 and Goose Alley.

6 Q. And was there a role that you had
7 at the scene that was particular to this case?

8 A. I took a post at Elder and Race
9 Street blocking traffic because we extended the
10 crime scene out to that far.

11 Q. And when you say "a post", what
12 does that mean, Officer Fusselman?

13 A. Just a traffic post to block
14 traffic from going down that street.

15 Q. And at a certain point later on
16 down the road, did a potential witness -- did
17 you have contact with a potential witness?

18 A. Yes.

19 Q. Could you describe to the jury how
20 that happened?

21 A. After a witness came forward by, I
22 believe, cell phone, another officer went over
23 and gathered this witness, gave him to me and
24 said will you watch him?

25 Q. And by watching him, you had -- do

1 you end up watching him, Officer Fusselman?

2 A. I asked him if he wanted to sit
3 outside or inside my police vehicle. He said he
4 would rather sit inside my police vehicle.

5 Q. What was that witness's name?

6 A. Victor Davis.

7 Q. How long was Victor Davis in your
8 vehicle that morning, Officer Fusselman?

9 A. About an hour to an hour and 15
10 minutes.

11 Q. And did you speak to Mr. Davis?

12 A. Yes.

13 Q. What type of things was Mr. Davis
14 saying at the scene?

15 A. He asked how long it's going to be
16 before he gets transported down to CIS where
17 homicide is located. And I asked him, you know,
18 we don't know how long it's gonna be, the
19 homicide investigators have to do their work at
20 the scene before they take all witnesses down
21 and question them.

22 Q. And did he say anything about his
23 visibility at the scene at all?

24 A. Yeah, he wanted to know if the
25 windows of the police cruiser in the back seat,

1 if they are tinted or blacked out or anything,
2 because he was scared that someone would see him
3 talking to a police officer in the back of my
4 car.

5 Q. Is that a normal protocol, Officer
6 Fusselman, in a case like a homicide or serious
7 shooting, for the homicide detectives not to
8 interview somebody on the scene, but for the
9 patrol officer, like yourself, to hold them and
10 then transport them for a more formal interview?

11 A. Yes.

12 Q. Have you done that before?

13 A. Yes.

14 Q. Let's move on then to, I believe it
15 was Halloween night, October 31st of 2008, were
16 you on duty on that night?

17 A. Yes.

18 Q. And were you in uniform in a marked
19 police car?

20 A. Yes.

21 Q. And directing your attention to
22 around 11:25 to 11:30 that night, where were you
23 located?

24 A. I was southbound at Race Street and
25 McMicken.

1 Q. Did you have a partner?

2 A. Not that night.

3 Q. Okay. Just riding alone?

4 A. Yes.

5 Q. Routine patrol?

6 A. Yes.

7 Q. And was there anything unusual that
8 happened around 11:25, 11:30 that evening?

9 A. We had a shots fired which
10 essentially turned into a shooting run come out.

11 Q. Could you describe to the jury
12 again, Officer Fusselman, in your own words,
13 where you were, what happened and what you did?

14 A. I'm sorry. Could you repeat that?

15 Q. Once you got the run about the
16 shooting, what did you do?

17 A. Since I was real close to the area
18 that they called it in, which was Republic and
19 Elder, it's a block over from Race Street. I
20 proceeded down Race, turned eastbound on Elder,
21 turned up Goose Alley, which is a little alley
22 between Race and Republic. Then came around the
23 breezeway and stopped almost directly right on
24 the person down who was shot.

25 Q. Okay. How long did it take you to

1 get to the scene?

2 A. Fifteen to 20 seconds.

3 Q. Were you the first officer at the
4 scene?

5 A. Yes.

6 Q. Could you describe to the jury what
7 you saw when you got there?

8 A. I saw a person laying face down,
9 half on the sidewalk, half on the street. I
10 approached him, asked him if he was okay. He
11 picked his head up, to me his eyes were kind of
12 closed and just took like his last breath where
13 he gasped for air and collapsed on the street.

14 Q. Was there something you were trying
15 to figure out from him in terms of who had done
16 this to him?

17 A. Yes, I asked him, you know, are you
18 okay? who did this? what were they wearing?
19 The usual questions that we ask when we come
20 across a victim.

21 Q. And why would -- was it obvious to
22 you at the time, Officer Fusselman, that the
23 gentleman on the ground was a shooting victim?

24 A. Yes.

25 Q. And are these -- you say they are

1 normal type of questions in a shooting. why do
2 you do that right when you get there?

3 A. We try to establish time frame,
4 suspect, what they were wearing, what type of
5 weapon was involved, and last known direction so
6 we can set up a quadrant position to try and
7 apprehend that individual.

8 Q. What is a quadrant position?

9 A. It's a -- you center yourself on
10 the scene with the police officers at the scene
11 and then four other officers take, you know,
12 like a northeast, southwest quadrant positions
13 to try to contain to a block.

14 Q. Okay. You were not able to do that
15 in this case?

16 A. No, I was the officer who was
17 actually on scene.

18 Q. But in terms of the victim
19 providing you information, in terms of where
20 they went or what the suspect looked like?

21 A. No, he didn't even say anything to
22 me. Just took that last breath and then
23 collapsed.

24 Q. Was there anything that you noticed
25 about the crime scene, Officer Fusselman, that

1 was unusual or drew your attention to?

2 A. I noticed a big glob of spit about
3 six, seven feet away from the victim.

4 Q. And what drew your attention to
5 that glob of spit?

6 A. It just seemed unusual for that
7 night and time because it was Halloween night,
8 but it was kind of cold out. And I know
9 Republic Street at that time of night is not
10 very well traveled.

11 Q. And did it seem to you to have a
12 connection to the crime itself?

13 A. Yes.

14 Q. Was there anything about the spit
15 that drew your attention to the potential age of
16 it?

17 A. It was very fresh. Like it still
18 had phlegm. It was actually thick on the ground
19 still and had, I guess, you could say bubbles in
20 it still that weren't popped.

21 Q. And noticing that glob of spit, in
22 your mind, did you think it had just been put
23 there?

24 A. Yes.

25 Q. As a result of that fresh spit and

1 your feeling that it was connected to the
2 homicide, what did you do with regard to that
3 spit?

4 A. Well, the fire department came on
5 scene to do, you know, how they try to save the
6 victim. I told the fire department try to work
7 on this side of the victim because there is
8 evidence on this side over there. So they were
9 trying to revive the victim real close to the
10 building, or the wall, I didn't have much room
11 to work with.

12 Q. So early on you were trying to
13 preserve the integrity of the scene by
14 preserving that --

15 A. Yes.

16 Q. -- potential evidence? Did the
17 firemen, did you keep watch of them to make sure
18 they didn't disturb that?

19 A. Yes.

20 Q. Were they able to do anything to
21 him to save his life at all?

22 A. They hooked up the, what is it,
23 defibrillator pads on him, got the heart rate
24 monitor on him and it didn't advise a shock and
25 they pronounced him pretty much dead right there

1 on the scene.

2 Q. When was it, Officer Fusselman,
3 that you made the connection between the Austin
4 homicide to the gentleman that was laying on the
5 ground on the 31st?

6 A. After the homicide detectives came
7 and they searched the victim's pockets and they
8 opened up his wallet and there was Detective
9 Ballman's business card. And I knew he looked
10 familiar when I first came on, but he was face
11 down. When the fire department rolled him, I
12 wasn't connecting it at that time, but it was
13 then, when they pulled out his wallet and his
14 business card, that I was like, this is the guy
15 that I transported down to homicide.

16 Q. On that Saturday in your car?

17 A. Yes.

18 Q. And this area right here, is this
19 all in the City of Cincinnati, Hamilton County,
20 Ohio?

21 A. Yes.

22 Q. And did you remain on or about the
23 scene until the homicide -- you talked about the
24 homicide detectives getting the wallet and so
25 forth. You remained there until they were there

1 at the scene as well?

2 A. Yes.

3 Q. Was crime scene tape and everything
4 done on this one the same as it was done on the
5 Austin homicide?

6 A. Yes.

7 MR. TIEGER: Just one moment. No
8 further questions, Officer.

9 THE COURT: You may cross, Counsel.

10 CROSS-EXAMINATION

11 BY MR. WHALEN:

12 Q. Officer Fusselman, you indicated
13 that you were the first officer on the scene.

14 A. Correct.

15 Q. Did you see Victor Davis walking
16 when you pulled up?

17 A. No, he was already laying on the
18 sidewalk.

19 Q. Okay. If an officer said that he
20 was on the scene and saw Victor Davis staggering
21 and then falling, how would he have seen that if
22 you were the first one on the scene and he
23 wasn't standing when you got there?

24 A. I can't answer that. I don't know.

25 Q. Okay. Do you know who the

1 subsequent officers were on the scene?

2 A. Yes.

3 Q. Who were they?

4 A. I believe Officer Rock, Officer
5 Lindle, Officer Knapp, Officer DeFranco were the
6 most immediate ones on the scene.

7 Q. How long after you were there did
8 Officer Knapp come in?

9 A. I would probably say a minute and a
10 half, two minutes later.

11 Q. And DeFranco?

12 A. With Officer Knapp.

13 Q. And how about Officer Rock?

14 A. I would say he was second on scene,
15 maybe 45 seconds to a minute after I was.

16 Q. And when you saw the victim, he was
17 not face down at the scene?

18 A. His body position was face down but
19 his head was to the left.

20 Q. Now, you said that this phlegm, you
21 knew, was connected to the homicide?

22 A. I believed it was, yes.

23 Q. And what made you believe that?

24 A. Just with Republic Street being
25 real close to Findlay Market, I know the workers

1 of Findlay Market do a real good job of keeping
2 that area clean of like trash and debris.

3 Q. But there is foot traffic up and
4 down the street on a regular basis?

5 A. Correct.

6 Q. And anybody could come down and
7 deposit it there?

8 A. Yes.

9 Q. Okay. As a matter of fact, there
10 are people in the apartments that are right next
11 to there?

12 A. Yes, sir.

13 Q. 802 and 804 and 806?

14 A. Yes.

15 MR. WHALEN: Okay. Can I have one
16 moment, Your Honor?

17 THE COURT: Yes.

18 MR. WHALEN: I have no other
19 questions, Your Honor.

20 THE COURT: Thank you, Officer.
21 You may step down.

22 You interested in keeping him as a
23 witness?

24 MR. WHALEN: No, Your Honor.

25 THE COURT: Potential witness?

1 MR. TIEGER: No, Your Honor. Thank
2 you.

3 THE COURT: So he may leave?

4 MR. TIEGER: He may be excused.
5 That will be fine.

6 THE COURT: Officer, you are
7 excused. Thank you for coming.

8 (Witness excused.)

9 MR. TIEGER: Let me see if
10 Mr. Shade is outside, Judge. Yes, Judge.
11 Judge, he has to be sworn.

12 THE COURT: That's right, sir.
13 Will you stand up, please and raise you
14 right hand to be sworn?

15 DEAN SHADE, JR.,
16 having been first duly sworn, was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. TIEGER:

20 Q. Good morning, Mr. Shade.

21 A. Good morning.

22 Q. And if you can pull that mike down
23 a little bit so we can all hear you. Thank you.

24 Could you tell everybody your
25 name, and spell your first and last name for

1 me?

2 A. Dean Shade, Jr., D-E-A-N,
3 S-H-A-D-E, Jr.

4 Q. Where do you live, Mr. Shade?

5 A. 1804 Republic.

6 Q. Did you say 1804?

7 A. Yes, sir.

8 Q. Could you describe that building
9 for the jury, if you could?

10 A. It kind of -- it's a huge apartment
11 building. It goes from like maybe a block long
12 around the corner on Vine Street to Republic,
13 and back around toward Vine.

14 Q. And the jury, we were all at the
15 scene a few days ago, and I think we saw -- I
16 know I saw you there. I don't know if the jury
17 did, but was that you that we saw at the scene
18 that day?

19 A. Yes, sir.

20 Q. And that's the building that you
21 live in?

22 A. Yes, sir.

23 Q. How many ways in and out of that
24 building are there?

25 A. On the Republic side, where I live

1 at, you can only go through my entranceway. But
2 there is a back, but my key won't fit that back
3 going toward Vine Street. And on the other
4 side, the 1802 is like the same way, but my key
5 won't fit those doors going toward the back.

6 Now around on the side is an alley,
7 it's also a part of our building that those keys
8 can fit my door and they'll fit the door going
9 back to the Vine Street side.

10 Q. Okay. How long have you been in
11 that building, Mr. Shade?

12 A. Approximately about six years.

13 Q. Who do you stay there with?

14 A. Myself.

15 Q. What floor of the building are you
16 on?

17 A. The third and fourth floor.

18 Q. You have two floors?

19 A. Yes, sir.

20 Q. And do you have windows in that
21 unit?

22 A. Yes, sir.

23 Q. What do those look out onto?

24 A. Toward the Republic side, looking
25 out toward southwest to the Findlay Market.

1 Q. So if you were in your house and
2 looking out the windows onto Republic Street,
3 what would you see?

4 A. The Hub Center. It's like a little
5 vacant lot across the street where I live at, a
6 portion of the park, and down toward the
7 alleyway going toward Race Street.

8 Q. Okay. Do you know the Gilbert
9 family at all, Mr. Shade?

10 A. I'm familiar with the mother and
11 her fiance.

12 Q. Do they stay in your building?

13 A. They didn't actually live in my
14 building, but, like I say, the building go a
15 whole block long, and their apartment was like
16 off in the alley side of the building.

17 Q. So if we were looking at your
18 building -- I know there is two different
19 address numbers, what's your address again?

20 A. 1804.

21 Q. And is there an 1802?

22 A. There is 1802 also.

23 Q. And would they have lived on the
24 1802 side, or do you think they still lived on
25 the 1804 side?

1 A. It wouldn't be either side because
2 when you get to 1804 there is an alley, and
3 their apartment building literally sits in the
4 alley.

5 Q. Okay. Gotcha. How long have you
6 been familiar with the Gilbert family, Mr.
7 Shade?

8 A. Well, I've been knowing Ms. Quinn
9 since we were going to school, her and JT.

10 Q. And you said you knew her boyfriend
11 or fiancé?

12 A. Yes.

13 Q. Do you know her kids at all?

14 A. Not -- I mean, not really because
15 they were kids, but I had an acquaintance on the
16 one boy, Shawn, a couple times. He got a car
17 out there, I helped him put some speakers in his
18 car one time out there, but other than that I've
19 never really acquainted with him.

20 Q. And what about Kareem Gilbert, had
21 you ever seen him around?

22 A. Yes, just in speaking, you know, I
23 just knew that was Quinn's son.

24 Q. And you knew his face, his
25 experience, what he looked like?

1 A. Yes, sir.

2 Q. You recognized him?

3 A. Yes.

4 Q. And as far as Shawn Gilbert, are he
5 and Kareem around the same age, maybe within a
6 couple years of each other?

7 A. Yes.

8 Q. Teenagers?

9 A. Yes.

10 Q. And would you recognize -- know
11 Shawn, what he looked like and so forth?

12 A. Yes.

13 Q. And did you know a man by the name
14 of Ruben Jordan?

15 A. Not -- I didn't. I don't even know
16 him, no.

17 Q. Do you -- looking around the room,
18 do you see anybody that looks familiar that has
19 a connection to the area that you live in?

20 A. I mean, I know of him, but I didn't
21 know him personally.

22 Q. Okay. Do you see him here today in
23 the room?

24 A. Yes, sir.

25 Q. Where is he?

1 A. At the defendant's table.

2 Q. In the striped shirt, right here
3 with the baldhead?

4 A. Yes, sir.

5 Q. And how was it that you came to
6 know -- I'll say recognize or be acquainted with
7 him at all?

8 A. Because for a long time I always
9 thought that JT was Quinn's baby daddy. And
10 after a while I seen him a couple times around
11 there, and then somebody happened to mention to
12 me that that was some of the kids' daddy, and I
13 really never knew that. And that's the only
14 reason I had acquaintance with him.

15 Q. So the connection was that he may
16 have been Kareem or Shawn's father?

17 A. Yes.

18 Q. But he didn't stay down there with
19 the family anymore?

20 A. Right.

21 Q. How often would you see him in that
22 area, Mr. Shade?

23 A. I only saw him down there even like
24 maybe once or twice with his people down there.

25 Q. Over the course of the number of

1 years that you were down there?

2 A. Yes, sir.

3 Q. Are you out a lot?

4 A. Pretty much, yes, sir.

5 Q. I mean, do you kind of know what's
6 going on in your neighborhood?

7 A. Yes.

8 Q. Familiar with the people and so
9 forth?

10 A. Yes.

11 Q. Is that common?

12 A. Yes.

13 Q. That everybody kind of knows each
14 other in a small neighborhood like that?

15 A. Yes, sir.

16 Q. Now, you do have a prior criminal
17 history within the last 10 years in terms of
18 theft, felony, dishonesty, crimes such as that.
19 You have a possession of drug conviction, that
20 was this year?

21 A. Yes, sir.

22 Q. And that was the drug Oxycodone, I
23 think?

24 A. Yes, sir.

25 Q. And are you on probation to who?

1 A. Yes, sir.

2 Q. Do you know what judge you're on
3 probation to?

4 A. DeWine.

5 Q. Okay. And you didn't do time on
6 that at all, you're on probation?

7 A. Yes, sir.

8 Q. And with regard to that case, I
9 think a few days ago you had asked me to somehow
10 get involved in that; is that correct?

11 A. Yes, sir.

12 Q. What did you ask me to do?

13 A. I can't pay the fine.

14 Q. How much do you owe?

15 A. It's a standard probationary fine
16 that they require.

17 Q. Do you know around how much that
18 is?

19 A. Like 1500 bucks.

20 Q. Okay. And do you have the funds to
21 pay that?

22 A. No, sir.

23 Q. Why can't you pay that?

24 A. Because I'm disabled. I'm on
25 disability and I take care of my grandchildren.

1 Q. Is there something wrong, you told
2 me, with your hands?

3 A. I have -- I can't feel my hands.
4 My hands are numb. I have no feelings in my
5 hands.

6 Q. And you asked me to go to Judge
7 Dewine and let him know that you're indigent and
8 can't pay that fine?

9 A. Yes, sir.

10 Q. And I think I told you I could
11 speak to him, but there is no promises at all
12 and --

13 A. Exactly.

14 Q. -- whatever he decides he decides?

15 A. Yes, sir. And I'm ready to do
16 community service if he says no.

17 Q. Okay. Did you become aware, Mr.
18 Shade, of a street murder of a Brian Austin on
19 October 16th of 2008?

20 A. Yes, sir.

21 Q. How did you become aware of that?

22 A. I heard the gunshot. They were so
23 loud that night. And I watched him stagger and
24 fall in front of the Hub Center and lay down and
25 he died.

1 Q. Did you see the police arrive and
2 so forth?

3 A. Yes, I did.

4 Q. Did you know Mr. Austin prior to
5 that?

6 A. I just happened to see him back and
7 forth around there. Like I say, I was pretty
8 much to myself. I would speak to him. You
9 know, younger guys like that I don't really deal
10 with them too much. I just kind of speak. If
11 they speak, I do; if they don't, I go on about
12 my business.

13 Q. And were you aware that Kareem
14 Gilbert was a suspect in the Austin homicide in
15 the days or weeks following?

16 A. Yes.

17 Q. And did you ever speak to Victor
18 Davis -- first of all, did you know Victor
19 Davis?

20 A. Yes, sir, I did.

21 Q. And how did you know Mr. Davis?

22 A. I met him. He just welcomed me to
23 the neighborhood when I moved in. He lived
24 there before I moved over there, and when I
25 moved in he just kind of welcomed me around

1 there.

2 Q. What kind of guy was Victor Davis?

3 A. He's a great guy, real great guy.

4 Heck of a laugh, and that laugh would make you
5 smile, make the whole room light up. He was a
6 real good guy.

7 Q. Did he have a nickname at all?

8 A. They call him Dread.

9 Q. And why was that?

10 A. Because he had dreadlocks, you
11 know, locks.

12 Q. Did you ever speak to Victor Davis
13 after the Austin homicide, Mr. Shade?

14 A. Yes, sir.

15 Q. And were you aware that he was a
16 witness to the Austin murder?

17 A. Well, basically what he told me is
18 that he said Brian was his friend, and he wasn't
19 gonna let him go out like that. He said he was
20 gonna tell them whoever done it.

21 Q. Was he pretty strong about
22 cooperating and making sure the truth came out
23 on that?

24 A. Very much so.

25 Q. Do you know if he was in any fear

1 at all for his own safety after he acknowledged
2 that he was an eyewitness and would cooperate?

3 A. Really no fear, but he approached
4 me one day and said come here, man, you hear
5 anyone around here talking about anything about
6 me or something like that? I said not really,
7 you know, because I don't really associate
8 around by the business. I was -- you know,
9 didn't know too many people around there. And I
10 said no, not really. He said if you do, let me
11 know, I said I will.

12 Q. Moving now to where Victor Davis
13 lived, Mr. Shade, in relation to where you
14 lived.

15 A. He lived in 1802 side with his
16 sister on the second and third floor.

17 Q. Was it your same building?

18 A. Yes.

19 Q. And how close or far away was it
20 where he lived to where the Gilbert family
21 lived?

22 A. Oh, maybe about 10, 15 feet around
23 the alley, because he was here, I was here, and
24 they lived around the alley right there.

25 Q. Now, moving to October 31st of

1 2008, around 11:25 to 11:30 at night, where were
2 you that evening?

3 A. On my fourth floor of my apartment,
4 laying across my bed.

5 Q. And could you describe to the jury
6 what, if anything, you heard or saw?

7 A. Laying there almost in a nod, and
8 then I heard like a muffle, pop, pop. So I
9 hesitated for a minute, and I said to myself,
10 like, not again. And I heard somebody say
11 "Dread, get up."

12 So I said Dread. So I got up and
13 went to the window, and I kind of looked out the
14 window like Dread, and I could see him laying
15 out there, and like he had a gunshot to his
16 head, and I could see him just kind of
17 flinching. You know, I watched him take his
18 last two breaths.

19 So I kind of panicked. I couldn't
20 find my cell phone, so I ran downstairs. I went
21 back upstairs and I found my phone, and then I
22 called 911 to get him some help.

23 Q. How long did it take, Mr. Shade, if
24 you could just approximate between the time you
25 heard the pops you told the jury about and the

1 time you went to the window?

2 A. Like I said, about a -- I laid
3 there for a minute because, like I said, I just
4 watched that boy die out there on the street,
5 and it took maybe about five to seven seconds
6 for me to get up and look out the window.

7 Q. Doesn't sound like you wanted to
8 look out the window?

9 A. I didn't.

10 Q. Was there anybody at or near the
11 body that you saw in the street?

12 A. Yes, sir, there was.

13 Q. And could you describe who you saw?

14 A. I really -- at the time I heard
15 somebody, like he was pulling on Dread's arm,
16 and I seen a guy turn and walk away. It's like
17 a little trail where we live at, and you can
18 walk through the trail, head back toward to the
19 Findlay Market, you know.

20 Like I say, like I've been saying
21 all along, I really can't say exactly who. It
22 was a guy about six-foot tall and he did have a
23 clean shaven head.

24 Q. Okay. And you've identified Ruben
25 Jordan as the person that you seen in the area a

1 couple times over the years. Was there any --
2 if you could tell the jury, in your own words,
3 Mr. Shade, any similarity between the man, the
4 baldheaded man standing over the body, and Mr.
5 Jordan?

6 A. Yes.

7 Q. Could you describe that similarity
8 to the jury?

9 A. I mean, cleanness of the head and
10 the size, stature. I mean, he wasn't as big as
11 he is now. This guy was a little slimmer then,
12 you know. But, like I said, I never did see his
13 face. I just happened to see him walk through
14 the trail, and I said, well, maybe he's going to
15 get some help because it's a telephone down on
16 the corner by the Findlay Market. And I said
17 maybe he's gonna get dude some help or
18 something, you know. And once I made the 911
19 call and they called me back, I was the only one
20 that made the 911 call, so...

21 Q. And the baldheaded man with the
22 similarities to Mr. Jordan, did he ever come
23 back?

24 A. No, sir.

25 Q. You say he's a little like bulkier

1 you mean like weight wise, like maybe he looks
2 little?

3 A. Yeah. This guy wasn't that big.

4 Q. Okay. And in terms of -- I don't
5 know if you can put it in a percentage, Mr.
6 Shade, how sure are you that it was or wasn't
7 Mr. Jordan?

8 A. I could say about 75 percent.

9 Q. Sure that what?

10 A. That it could have been.

11 Q. Okay. At the time that he -- I
12 think you spoke to police officer -- Detective
13 McGuffey about what had happened. When you
14 talked to him, you had thought that the
15 baldheaded guy or the shaved head guy was trying
16 to help your friend on the street. Had you
17 rethought that at all?

18 A. Yes. I mean, because I'm thinking
19 I heard him say "Dread" before I heard the
20 shots, and they sounded so muffled, so I don't
21 know if he was -- if he had cornered him out
22 there or caught him coming out there or
23 whatever, 'cause I was with him earlier in the
24 day and he had no fear of nothing going on or
25 anything, you know.

1 So I don't know if they -- whoever
2 it was cornered him out there, caught him
3 getting out of the car or something and he kind
4 of -- like because I heard a little scuffling
5 sound before, but I really didn't pay it no
6 attention because it was all the way -- I really
7 didn't pay it any attention until after I heard
8 the shots.

9 Q. And the person was trying to -- was
10 over his body grabbing his arm you said?

11 A. Yes.

12 Q. And you initially thought he was
13 trying to help him?

14 A. I thought he might have, like I
15 also heard somebody -- like somebody might have
16 said get up, Dread. And I'm thinking to myself,
17 I know Dread probably got drunk out there and
18 fell, you know, that's what my thinking was at
19 first. And so that's what made we want to get
20 up and look too, because something I wanted to
21 laugh at if it was, you know, and I seen what
22 had happened.

23 Q. Thinking back now, the person is
24 like get up, get up, are you thinking now that
25 was a friendly gesture or a taunting gesture?

1 A. More like a taunting, now that I
2 think about it.

3 Q. And you had said, Mr. Shade, that
4 you were familiar with Kareem Gilbert, his
5 appearance, Shawn Gilbert and so forth, the
6 shaved head, baldhead guy standing over the body
7 of Victor Davis, could that have been Kareem
8 Gilbert?

9 A. Absolutely not.

10 Q. Could it have been Shawn Gilbert?

11 A. No, sir, absolutely not.

12 Q. And then did the police come on the
13 scene then?

14 A. Yes.

15 Q. And try to tend to Mr. Davis' body?

16 A. Yes.

17 MR. TIEGER: Just one moment,
18 Judge. No further questions, Judge.

19 THE COURT: Cross?

20 CROSS-EXAMINATION

21 BY MR. WHALEN:

22 Q. Mr. Shade, you have had a good deal
23 of time to think about this, have you not?

24 A. Yes, sir.

25 Q. Do you remember when it occurred?

1 A. Halloween.

2 Q. What year?

3 A. '08.

4 Q. Okay. And you got up and you
5 called the police?

6 A. Yes, sir.

7 Q. And then before you called the
8 police you heard someone say "Dread, get up," am
9 I correct?

10 A. Yes.

11 Q. Was that the first thing you heard
12 this person say?

13 A. Yes.

14 Q. Okay. Do you remember that you
15 came in and gave an interview to Officer
16 Terry -- Detective McGuffey a couple days after
17 the shooting?

18 A. I think so.

19 Q. Do you know whether you went down
20 and gave an interview?

21 A. I did, but I don't know if it was a
22 couple days afterwards or not.

23 Q. Okay. But it was within a week of
24 when it occurred?

25 A. It could have been, sir.

1 Q. But you disagree with me, or are
2 you saying it was longer?

3 A. No, I just can't remember at the
4 time how long it was after that.

5 Q. Do you have trouble with your
6 memory?

7 A. No, sir, I don't.

8 Q. Okay. And in that interview,
9 McGuffey said -- Officer McGuffey asked you a
10 question, but he asked a question: But he
11 called him Dread? And your answer was, yeah, he
12 called him Dread, but I heard him call him
13 Roots. Get up, Roots. You all right. You all
14 right, Roots. You all right. Dread, you all
15 right?

16 A. True.

17 Q. You didn't mention the name Roots
18 here today?

19 A. I don't recall Roots. I never
20 called anybody Roots.

21 Q. I didn't ask you if you called him,
22 did you hear somebody call Dread Roots?

23 A. No, I didn't.

24 Q. So your information that you gave
25 the officer, within a week of when this

1 occurred, is not correct?

2 A. I never called anybody Roots. I
3 always called him Dread or by their name.

4 Q. You indicated to McGuffey that what
5 you heard out on the street was someone saying
6 he called him Dread, but I heard him call him
7 Roots, get up, Roots?

8 A. I don't remember that.

9 Q. You don't remember that at all?

10 A. No, sir, I don't.

11 Q. Okay. And Officer McGuffey said
12 are you saying Roots? And you answered he said
13 Roots at first, and then he said Dread also.
14 Roots, yeah, like friend, Roots. Did you say
15 that?

16 A. I don't recall that. Like I said,
17 I don't remember calling anybody Roots.

18 Q. If someone is saying to the man
19 that is laying, Mr. Davis, on the ground, get
20 up, are you all right, you all right? You all
21 right? You all right? Does that sound like
22 taunting to you?

23 A. Depending on the way you look at
24 it.

25 Q. Well, I'm asking how you look at

1 it.

2 A. It could be, yes.

3 Q. You never once mentioned, when you
4 talked to the police, that you heard Mr. Davis
5 being taunted? Why didn't you tell them that?

6 A. Because I had time to look at it
7 and think about the way it happened. I seen the
8 whole case and the whole scenario in a different
9 light.

10 Q. What made you see it in a different
11 light?

12 A. Because the way that it happened,
13 and there was nobody else out there that night.
14 It was only one person over him, that was the
15 person I seen walk away and go to the trailway.

16 Q. And you don't think it might have
17 been somebody who tried to help?

18 A. At this point now, looking back at
19 it, I don't think so.

20 Q. Well, what's occurred that made you
21 change your mind?

22 A. Just the way that it's been going
23 on. I thought that maybe like a week or so
24 after it happened that the guy that went through
25 the trail was the guy that killed Dread.

1 Q. So you never mentioned that to the
2 officers?

3 A. There's a whole lot of things that
4 I didn't mention that -- I mean, a whole lot of
5 things I didn't want to be -- I didn't want to
6 be involved with or be bothered with in the
7 first place. I don't want to be here now.

8 Q. But you made the 911 telephone
9 call?

10 A. I would have made that 911 call for
11 anybody.

12 Q. But the fact you made it and you
13 know --

14 A. Yes.

15 Q. -- the police were going to know
16 who made that call?

17 A. Yes, because I -- really I didn't
18 know that, you know, I was going to be the only
19 one that made the call, because I thought the
20 one that walked away from Dread was going to the
21 phone booth down the street and get him some
22 help. And since come to figure out that he
23 didn't, that I was the only one that called.

24 Q. Nonetheless, you thought about this
25 now and you've changed your mind and there was

1 taunting going on?

2 A. It could have been, sir, that's
3 what I said.

4 Q. It could have been?

5 A. Yes.

6 Q. Now, you understand these ladies
7 and gentlemen of the jury have a very important
8 job in deciding whether this gentleman committed
9 this murder?

10 A. Yes, sir, I do.

11 Q. How sure are you that it was
12 taunting?

13 A. Like I say, I go back to the
14 75 percent that it might have been the defendant
15 that done it.

16 Q. And it could have been somebody
17 trying to help him?

18 A. Yes, sir, it could have been.

19 Q. Okay. Now, you said this was an
20 individual walking away that was six-foot tall
21 and bald?

22 A. Pretty much, yes.

23 Q. And I think you said that you saw
24 Dread, am I correct?

25 A. Yes, sir, I did.

1 Q. And his body was jerking at the
2 time that you saw him?

3 A. Yes, sir.

4 Q. Okay. Now, you also saw a woman
5 there?

6 A. Yes, I did.

7 Q. Now, didn't you just tell us that
8 the only person you saw was the bald man?

9 A. I said standing over him that
10 walked away. Miss Leah walked up the street
11 this way. I seen her pick an object off the
12 ground. She picked up another object off the
13 ground. She happened to see Dread, and she
14 screamed oh, that's Dread. And she started
15 calling for the guy that lived up on the second
16 floor, which his name was James. And by that
17 time I was already on the phone looking out the
18 window.

19 Q. Now, the items that she picked up,
20 were they near the body?

21 A. They was basically -- he lived at
22 1802, and that's the way she was coming. And
23 she was picking them up coming toward where I
24 live at, where the body was laying at.

25 Q. How far away was she from the body

1 when she picked up the first thing?

2 A. Maybe about three or four feet.

3 Q. And did you see what it was that
4 she picked up?

5 A. I couldn't see what it was. I
6 couldn't see what it was.

7 Q. And how much closer to the body was
8 she when she picked up the second thing?

9 A. The two items was like
10 simultaneous. She picked up one and she picked
11 up another one as she was walking. And she
12 happened to look up like that and saw his body
13 laying out there.

14 Q. Now, did you tell the police about
15 the man that you saw walking down the path?

16 A. Yes, sir.

17 Q. And you indicated to the police
18 this man was between 30 and 40 years old; is
19 that correct?

20 A. Yes, sir, at the time.

21 Q. And you say he was kind of short?

22 A. I said about six feet tall.

23 Q. Detective McGuffey --

24 MR. WHALEN: I'm on Page 5.

25 MR. TIEGER: Thank you.

1 Q. Do you remember anything about his
2 physical description, Mr. Shade? Not really. I
3 just remember he was kind of short. I think he
4 had on a brown jacket, or something like that.
5 But the way it just seemed to me, it was more he
6 was trying to help him.

7 A. That's what I said, sir.

8 Q. And you told the officer he was
9 short?

10 A. I said about six feet tall. I
11 mean, I may have said that, but that's, you
12 know, that's what I said.

13 Q. What's what you said?

14 A. I said he was short and had on a
15 brown jacket. He might have been trying to help
16 Dread.

17 Q. And that's what you believed when
18 you talked to the police a couple days later?

19 A. Exactly.

20 Q. And now you have changed your mind?

21 A. I never changed my mind. I just
22 happened to look at the scenario in my head and
23 what happened, sir.

24 Q. But do you think that six foot tall
25 is short?

1 A. I mean, depending on who you
2 talking to.

3 Q. Well, I know. But if you're
4 talking to Kareem --

5 A. If you're talking to me it's not
6 short.

7 Q. Six foot is not short to you?

8 A. No, sir.

9 Q. Okay. But you told the police he
10 was short?

11 A. Yes.

12 Q. Okay. And you told the police you
13 thought he was trying to help?

14 A. Yes, sir.

15 Q. Detective McGuffey --

16 MR. WHALEN: On Page 12.

17 MR. TIEGER: Thank you.

18 Q. Okay. Well, who's the little guy
19 that shot the guy? And you said the Gilbert
20 boy.

21 A. What?

22 MR. WHALEN: May I approach, the
23 witness, Your Honor?

24 THE COURT: Yes.

25 Q. This is a transcript of what you

1 said to the police. Detective McGuffey said
2 okay. Well, who's the little guy that shot that
3 guy? And you said the Gilbert boy.

4 A. Okay. They shot what guy?

5 Q. Mr. Davis that was down on the
6 street.

7 A. I don't remember never saying that.

8 Q. Okay. Sir, did you call 911 two
9 times that night?

10 A. No, sir.

11 Q. So if they had gotten two 911
12 calls, one of them was somebody else other than
13 you?

14 A. I called them and then they called
15 me back.

16 Q. Did you tell them that there was a
17 minivan that drove off?

18 A. Nope.

19 Q. When you called, did the 911
20 operator tell you that they already had a call
21 already and the police were on their way?

22 A. No, not that I know of. I thought
23 I was the only one that called.

24 Q. You indicated to the 911 operator
25 that you saw this man take his last breath?

1 A. Yes, sir.

2 Q. Okay. Was there a police officer

3 --

4 A. That I thought.

5 Q. Was there a police officer standing
6 by him when he did that?

7 A. Nope.

8 Q. How much longer after he took that
9 last breath did the police officer show up?

10 A. After I saw that, I got out the
11 window. I laid on my bed, everything went
12 blank, quiet, black. I didn't want to see
13 anymore.

14 Q. When the police show up, there is
15 usually sirens?

16 A. Yes.

17 Q. Did you hear sirens?

18 A. Yes, I did.

19 Q. How long after you made the phone
20 call?

21 A. Oh, they was pretty quick that
22 night. They was there almost immediately that
23 night.

24 Q. Okay. And you see blue lights
25 flashing in the air?

1 A. Yes.

2 Q. And those were almost immediate?

3 A. Yes.

4 Q. But you don't know what they were
5 doing down there?

6 A. I knew what they was doing. A man
7 just got killed out there. I knew what they was
8 doing. I just didn't want to see it.

9 Q. I think you indicated -- how many
10 shots did you say you heard?

11 A. I think I heard like two shots.

12 Q. Okay. We are going back to your
13 discussions with Officer McGuffey.

14 MR. WHALEN: I'm on Page 2.

15 MR. TIEGER: Thank you.

16 MR. WHALEN: And 3.

17 Q. Detective McGuffey said, do you
18 remember how many you heard? They were talking
19 about shots. I'm sorry. I'll go forward.

20 Detective McGuffey said, okay.
21 Can you tell me what you saw or heard. Mr.
22 Shade: First like sound like a little -- like
23 a little rustling, then I heard shots pow, pow,
24 pow. Detective McGuffey: Do you remember how
25 many you heard? Mr. Shade: It was like three

1 to four shots.

2 A. I may have, sir.

3 Q. Do what?

4 A. I may have said that.

5 Q. You may have said that?

6 A. Yes.

7 Q. Okay. And you had forgotten about
8 that?

9 A. No, it was just -- it was just so
10 crazy to see him laying out there. I mean, it
11 was just -- like I said, I had -- I couldn't
12 find my phone. I panicked. I was running up
13 and down them stairs trying to find a phone. It
14 was just kind of crazy at that time.

15 Q. So you were in an excited state?

16 A. Yes.

17 MR. WHALEN: I have no other
18 questions, Your Honor.

19 THE COURT: Okay. Go ahead,
20 Counsel.

21 MR. TIEGER: Thanks, Judge.

22 REDIRECT EXAMINATION

23 BY MR. TIEGER:

24 Q. Mr. Shade?

25 A. Yes.

1 Q. I don't know if you have looked at
2 this transcript or not. I don't think we went
3 over it at all. Basically what happened is the
4 conversation you had with Officer McGuffey was
5 taped, that was transcribed, which means that a
6 court reporter typed up what you said and then,
7 as with all the statements, a copy of that is
8 given to us, but then a copy is given to the
9 defense team so they would have that to review
10 as well before the trial.

11 But I'm not sure if you understood
12 one of the questions Mr. Whalen was asking.
13 Going to page -- the bottom of Page 11, where
14 you had said, you know what, sir, this little
15 guy got killed over there in front of the Hub.
16 Were you referring to Mr. Austin?

17 A. Yes.

18 Q. And McGuffey said, right. And you
19 said a couple weeks ago. McGuffey said uh-huh.
20 And then you said, all right. Now, about like a
21 week or so after, it was kind of peculiar
22 because Dread asked me, like what you hear about
23 me out here, man? You know, what they talk
24 about me out here like that? And let me know
25 the little guy shot and killed that guy over

1 there. And then he asked you: well, who was
2 the little guy that shot that guy? And that's
3 when you said?

4 A. The Gilbert boy.

5 Q. The Gilbert boy. Is that -- you
6 weren't referring to Mr. Davis, you were
7 referring to Mr. Austin?

8 A. Exactly.

9 Q. He didn't read the first part of
10 the transcript, just that last little bit?

11 A. Exactly.

12 Q. Okay. And when you said it was the
13 Gilbert boy that choked that guy around the
14 corner, would you have said "choked that guy
15 around the corner"?

16 A. Choke?

17 Q. That's -- and it wasn't Ms. Renken,
18 but a court reporter was trying to understand
19 your words and put "choked that guy". Did you
20 say that?

21 A. I don't -- I don't believe I meant
22 to say choke.

23 Q. Okay. She might have got --
24 misunderstood what you said?

25 A. Yeah.